

In The United States District Court  
Northern District of Illinois  
Eastern Division

**FILED**

FEB 02 2018

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

United States of America,  
vs.  
Saul Tejada

NO. 05 CR 194  
Honorable Robert W. Gettleman

Jan. 24, 2018

### Petition To Confirm Record

I am respectfully petitioning this Court to confirm record regarding my Criminal History Score. On May 24, 2007, in Case No. 05 CR 194, I was sentenced in this Court. At my sentencing hearing I successfully challenged my Criminal History Score brought forth by the prosecutor and Probation Office. This Court ruled that the prior conviction, the government was attempting to use against me, was part of the instant offense and could not be used towards my Criminal History Score. The Court ruled that my Criminal History Score was 0 (zero). (See ~~a~~ sentencing transcript attached.)

I am currently attempting to get a transfer to a lower security prison and this matter is preventing me from doing so. The Federal Bureau Of Prisons uses the

Pre Sentence Investigation Report to determine inmate classifications and Criminal History Score is part of said classification to determine what security level facilities inmates are to be housed in. In my case the Pre Sentence Investigation Report is incorrect concerning my Criminal History Score and therefore affecting my custody classification.

In Conclusion, a response from your Honor confirming the record, which states that I have a Criminal History Score of 0 (zero), would suffice to satisfy this petition.

Respectfully Submitted  
Saul Tejeda

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4 under the guidelines about acceptance of responsibility even  
5 after trial, if you went to trial merely to preserve a legal  
6 claim of some sort, it can be considered. And I think there  
are  
7 some extraordinary circumstances where some people go to trial  
8 and basically never contest liability.

9 But that's not what happened here at all. You were  
very  
10 aggressive and very effective in the way you cross-examined  
11 people on the issue of criminal liability in this case. And  
12 that's just totally inconsistent with acceptance.

13 That's how I feel about that issue, Mr. Neely. You  
14 know, I understand what you are saying, but it's just hard for  
me  
15 to accept that.

16 I don't know if there is anything else anybody wants  
to  
17 say. I know you've made your record on that. But that's how I  
18 feel. I want the record to be very clear about that.

19 There is some other issues though that I want to deal  
20 with, and then I want to talk about computations under the  
21 guidelines, and then I want to talk about 3553.

22 MR. NEELY: Can we deal with criminal history?

23 THE COURT: Yes, I definitely want to do that. I just  
24 want to make sure that's where we're at at this point.

25 MS. CANNON: That's correct, Your Honor.

21

1 THE COURT: I think that probably is where we're at.

2 MR. NEELY: Your Honor, our position is that Mr.  
3 Tejeda's criminal history should be zero. He has several  
traffic

Mr.

4 violations, and then he has a conviction that occurred in 2002.  
5 The government alleges that this conspiracy started in 2000.

6 Tejeda's conviction was part of the conspiracy; therefore, it  
7 should not be used to enhance his sentence.

8 THE COURT: Now, which conviction is that?

9 MR. NEELY: I believe that's --

10 MS. CANNON: Judge, we're in agreement with that. I  
11 don't think there is any dispute about that.

12 THE COURT: Is this the one on --

13 PROBATION OFFICER: Judge, it would be page 3 of the  
14 supplemental report. There was a supplemental filed.

15 THE COURT: Right.

16 MR. NEELY: I didn't get that.

17 THE COURT: The one on January 30th, 2002?

18 MR. NEELY: Yes.

19 THE COURT: So that should not be counted?

20 MR. NEELY: Yes. So he should have zero criminal  
21 history.

for

22 MS. CANNON: Judge, we do agree that, I think it was  
23 the conviction for which Mr. Tejeda was arrested on May 1st of  
24 2002, it was possession of a controlled substance conviction.

25 THE COURT: Wait. That's not the one that Mr. Freeze

22

1 just mentioned.

2 PROBATION OFFICER: No, Judge. The one you were just  
3 speaking of was a 2002 conviction for possession of controlled  
4 substance, page 3 of the supplemental report.

5 THE COURT: Right, case number 01 CF 2612?

6 PROBATION OFFICER: Yes, sir.

7 MS. NOLLER: Right.

8 MS. CANNON: I'm sorry, I must have the wrong arrest  
9 date.

10 THE COURT: That's also on page 22 of the presentence  
11 report.

12 MR. NEELY: I think we're talking about the same  
13 incident.

14 MS. NOLLER: Yes.

15 THE COURT: Yes. Okay. So let's talk about, the  
other  
16 convictions then were zero points, correct?

17 MS. CANNON: Judge, yes. I'm trying to find -- I just  
18 received Probation's supplemental report today, but --

19 PROBATION OFFICER: The report went out in March,  
Judge.

20 THE COURT: March 22nd.

21 I know the government argued, had an argument that  
22 resulted in a 3 instead of a 2. And the 2 was based on this  
23 conviction, which you agree shouldn't be counted. So I'm not  
24 sure how you get there, Ms. Cannon.

25 MS. CANNON: Right. The government -- I don't think

23

1 this contains both of the convictions we addressed.

2 Judge, the supplemental report, we had filed in our  
3 brief, I think that is what I'll refer to, Mr. Tejeda has  
4 convictions from March 19th of 2003 for attempt to resisting of

a

5 peace officer and driving on a suspended license. They're  
6 separate convictions, but he was sentenced on the same date.

For

7 each of them --

line,

8 THE COURT: Can you just refer me to the page and

9 please?

10 MS. CANNON: Sure. Page 21 is the only conviction  
11 discussed there, and page 20, lines 596 through 598.

12 THE COURT: All right.

day

13 MS. CANNON: As Your Honor can see, there are separate  
14 arrests, but they were, Mr. Tejeda was convicted on the same  
15 and received the same sentence for both.

government

16 I have discussed this with probation. I have done my  
17 own research. I understand from probation that they have done  
18 their own research. And it does not appear to us that there is  
19 case law addressing this issue. But the argument the  
20 is making is that although driving with a suspended license and  
21 attempted resisting of a peace officer require a sentence of 12  
22 months supervision or probation to be imposed in order for one  
23 criminal history point to count, in this case sentences of 11  
24 months supervision were initially imposed, but then Mr. Tejeda  
25 pled guilty to the violation that was filed by the state, and

he

24

22nd

imposed.

1 was not -- his probation was not then terminated until April  
2 of 2004. That date is 12 months after the sentence was

3 Now, if you look at 4A1.2(k)(1) in the guidelines, it  
4 talks about prior revocations of probation. It talks about the  
5 fact that any additional terms of imprisonment or probation or

6 whatever that are imposed being added to the original term in  
7 order to come up with the number of points that are attributed  
8 to --

9 THE COURT: The original term of imprisonment?

10 MS. CANNON: Or it says "revocation of probation,"  
11 4A1.2(k)(1), "Revocations of probation."

12 THE COURT: I'm reading it. It says you add that, you  
13 add the original term of imprisonment to any term of  
imprisonment

14 imposed upon revocation, not supervision, but imprisonment.

15 MS. CANNON: Judge, let's see here --

16 THE COURT: Are we reading from the same hymnal here?

17 MS. CANNON: 4A1.2(k)(2)(b), revocation of probation.

18 THE COURT: You said (k)(1) before.

19 MS. CANNON: Okay, pardon me. "May affect the time  
20 period under which certain sentences are counted as provided in  
21 4A1.2(d)(2) and (e). For purpose of determining the applicable  
22 time period, use the following." And then if you skip down to  
23 (3)(i), you're directed to add the date of the original  
sentence

24 to the revocation term.

25 THE COURT: But he wasn't sentenced to probation. He

25

1 was sentenced to supervision.

2 MS. CANNON: Well, right, Judge. But there is case  
law,  
3 abundant case law, and we can certainly find a cite if Your  
Honor  
4 would like, stating that supervision is the functional  
equivalent  
5 of probation for guidelines purposes.

6 MR. NEELY: It seems like if Congress meant that and  
7 intended that, it would have said that.

8 THE COURT: What's your position, Mr. Freeze?

9 PROBATION OFFICER: Judge, my position, the position  
of  
10 the office, the Probation Office, that that's dealing with  
11 someone who is in prison, perhaps they're given supervision,  
12 probation, and they are revoked, and sentenced subsequently to  
13 another term of imprisonment.

14 In this case you have a supervision sentence to begin  
15 with and the actual sentence imposed upon revocation is simply  
by  
16 way of fine. There isn't even a subsequent supervision  
sentence  
17 imposed.

18 So even under that theory, there is nothing to add to  
19 the 11 months except a fine. Granted, he was in violation for  
20 the period of 12 months. That's our position, of the Probation  
21 Office, Judge.

22 THE COURT: All right.

23 MS. CANNON: Judge, I'm sorry, let me set up the issue  
a  
24 little better. First of all, I'm directing the Court to the  
25 wrong suspended license conviction. It's the one on page 24.

26

1 Mr. Tejeda has several, but it's the one on page 24. That's  
the  
2 one he pled guilty to on March 19th of '03. He was sentenced  
to  
3 11 months supervision. On March 17th of '04, his supervision  
was  
4 revoked. And then one month later, his supervision was

5 terminated.

6           Respectfully, I don't think the issue was was it  
7 supervision or probation. I think the issue is was an  
additional  
8 sentence imposed. And while the court records does not  
9 reflect -- I think probation can correct me if I'm wrong, but  
in  
10 my discussions with probation, my understanding of their  
concern  
11 was that because when his supervision was revoked, when he pled  
12 guilty to the violation, there is not a specific statement  
13 imposing an additional sentence of one month that they're  
14 unwilling to assign the additional criminal history point for  
15 those 12 month terms.

16           I see Your Honor shaking his head, but --

17           THE COURT: I just think this whole thing is so  
obtuse.

18           MS. CANNON: It is obtuse. And as I said, I could not  
19 find any case law on this. Mr. Freeze could not find any case  
20 law on this. At the end of the day it's a distinction without  
a  
21 difference, because if Your Honor finds the defendant to be at  
a  
22 level 38, because for guidelines purposes whether he's in  
23 criminal history category I or III, his offense level is so  
deep  
24 into the guidelines that it does not make a difference.

25           THE COURT: All right. You know, I tried to follow  
your

27

1 original argument in your brief, and I was having trouble. I'm  
2 having even more trouble now.

3 I'm going to adopt the Probation Office's approach.

4 Let's move on, because we have some other issues that I would  
5 like to deal with. I think that the Probation Office has  
scored

6 this as basically a zero, right?

7 PROBATION OFFICER: Judge, right. If the Court rules  
8 the other offense doesn't count, and it's zero points.

9 THE COURT: The other offense by agreement doesn't  
10 count, because it's definitely part of the conspiracy.

11 PROBATION OFFICER: Correct. Criminal history  
category

12 would be a I.

13 THE COURT: Okay. So let's go with that.

14 I would like both parties' guideline calculations  
based

15 upon everything we've discussed, taking the government's 150  
16 kilograms and with the four-point enhancement for  
17 organizer/leader.

18 I'm going to make that finding right now, because I  
19 understand what you are saying, this isn't like some cases I've  
20 had where you have a gang leader with minions following and a  
21 formal process and a formal organization, almost a paramilitary  
22 organization like we've seen in some other gangs. This gang  
may

23 have that organization for all I know, but Mr. Tejeda didn't  
24 occupy that position.

25 But the enhancement itself is based on relative

28

1 culpability. And relatively speaking, I heard more than enough  
2 evidence to convince me that he was a leader of the people that  
3 he was dealing with, at least some of them, and that there were



1 THE COURT: Anything you want to say, Mr. Freeze, that  
2 you haven't already said?

3 PROBATION OFFICER: Judge, nothing.

4 THE COURT: Are we going to get an amended or an  
5 addendum to the PSR reflecting the new criminal history  
6 calculation?

7 PROBATION OFFICER: If Your Honor so orders, otherwise  
8 it's in the statement of corrections.

9 THE COURT: Well, yes, I think so, because that should  
10 be accurately scored for future purposes.

11 All right. Mr. Tejeda, is there anything you want to  
12 say to me, sir?

13 THE DEFENDANT: Yeah. I just want to say I'm sorry to  
14 my family for putting them through this. I just want to say I  
15 love them, too. And I want to tell this Court that I'm sorry,  
16 too, and the community, I'm sorry, too. You know, I wish I

could

17 take what I did back, but I can't. I just hope you guys accept  
18 my apology. That's it, Your Honor. Thank you.

19 THE COURT: All right. Thank you, Mr. Tejeda.

20 All right. I guess to the extent the record isn't  
21 clear, I believe that there is enough to establish by a  
22 preponderance at least 150 kilograms of cocaine. So I think

the

the

23 government's scoring of the criminal history -- I'm sorry --

24 offense level here is correct, and it caps out at 43.

25 With a criminal history level of I or VI, it doesn't

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